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**IN THE
COURT OF APPEALS OF INDIANA**

JOHN J. COLEMAN,)	
)	
Appellant-Defendant,)	
)	
vs.)	No. 45A03-0610-CR-463
)	
STATE OF INDIANA,)	
)	
Appellee-Plaintiff.)	

APPEAL FROM THE LAKE SUPERIOR COURT
The Honorable Thomas P. Stefaniak, Jr., Judge
Cause No. 45G04-0601-FB-9

June 15, 2007

MEMORANDUM DECISION - NOT FOR PUBLICATION

VAIDIK, Judge

Case Summary

John Coleman (“Coleman”) appeals his sentence of ten years for robbery as a Class B felony. Specifically, Coleman argues that the trial court abused its discretion by assigning excessive aggravating weight to Coleman’s criminal history because his prior convictions for possession of cannabis and obstruction of justice do not sufficiently relate to the instant offense of robbery and because his conviction for unlawful use of a weapon occurred after the instant offense was committed. Finding that the trial court did not abuse its discretion in sentencing Coleman, we affirm.

Facts and Procedural History

Coleman stipulated that on April 8, 2001, he and Jason Armstrong (“Armstrong”), while armed with a shotgun, robbed a Burger King in Dyer, Indiana, and ordered the manager to “place money from the restaurant’s safe into a white Jewel/Osco bag.” Appellant’s App. Vol. 1 p. 19. They then ordered the manager and another employee into the office area of the restaurant, at which point Armstrong stuck the shotgun into the employee’s mouth and said, “I should shoot you for asking if it (the shotgun) is real.” *Id.* Coleman and Armstrong then fled the restaurant with the money from the safe.

Thereafter, the State charged Coleman with the following: Count I, Robbery as a Class B felony,¹ Counts II and III, Confinement as Class B felonies,² and Count IV, Battery as a Class C felony.³ Coleman agreed to plead guilty to robbery with the

¹ Ind. Code § 35-42-5-1.

² Ind. Code § 35-42-3-3(b)(2)(A).

³ Ind. Code § 35-42-2-1(a)(3).

sentence to be capped at ten years, and the State agreed to dismiss Counts II, III, and IV. At Coleman's sentencing hearing, the trial court found his criminal history and failed attempts at rehabilitation to be aggravating factors. The trial court found Coleman's guilty plea and acceptance of responsibility to be mitigating factors. Finding that the aggravating circumstances outweighed the mitigators, the trial court sentenced Coleman to ten years in the Indiana Department of Correction.

Discussion and Decision

On appeal, Coleman contends that the trial court abused its discretion by sentencing him to ten years for the crime of robbery.⁴ Sentencing lies within the discretion of the trial court. *Patterson v. State*, 846 N.E.2d 723, 727 (Ind. Ct. App. 2006). The trial court's assessment of the proper weight of mitigating and aggravating circumstances is entitled to great deference on appeal and will be set aside only upon a showing of a manifest abuse of discretion. *Id.*

Coleman argues that the trial court should have given his criminal history less aggravating weight because his convictions for possession of cannabis and obstruction of justice do not sufficiently relate to the instant offense. Coleman is correct that the significance of the criminal history aggravator "varies based on the gravity, nature and number of prior offenses as they relate to the current offense." *Edmonds v. State*, 840 N.E.2d 456, 461 (Ind. Ct. App. 2006), *trans. denied*. But Coleman's criminal history includes more than convictions for possession of cannabis and obstruction of justice. In

⁴ Because Coleman committed his offenses before the 2005 amendments to the sentencing statutes, we operate under the former presumptive scheme. *See Walsman v. State*, 855 N.E.2d 645, 650-51 (Ind. Ct. App. 2006), *reh'g denied*; *Weaver v. State*, 845 N.E.2d 1066 (Ind. Ct. App. 2006), *trans. denied*; but see *Samaniego-Hernandez v. State*, 839 N.E.2d 798, 805 (Ind. Ct. App. 2005).

1998, Coleman was convicted for intimidation, a felony, and his probation was terminated unsatisfactorily. In 2003, Coleman was found guilty of possession of a controlled substance and his probation was again terminated unsatisfactorily. Later that year, he was convicted of aggravated unlawful use of a weapon, a felony.⁵ Coleman's felony convictions for aggravated unlawful use of a weapon and intimidation are sufficiently related to the crime of armed robbery to serve as an aggravating circumstance. *See Spiller v. State*, 740 N.E.2d 1270, 1274 (Ind. Ct. App. 2001) (holding that the trial court did not abuse its discretion in finding that the defendant's criminal history, consisting of two nonviolent misdemeanor convictions, is a significant aggravator in the context of a murder sentence). We cannot say that the trial court abused its discretion by giving Coleman's criminal history significant aggravating weight.

Affirmed.

SULLIVAN, J., and ROBB, J., concur.

⁵ Coleman contends that the trial court erred by considering his conviction for unlawful use of a weapon in its assessment of his criminal history because it occurred after the instant offense was committed. We cannot agree. "Criminal activity that occurs subsequent to the offense for which one is being sentenced is a proper sentencing consideration." *Sauerheber v. State*, 698 N.E.2d 796, 806 (Ind. 1998).